

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ROBERTO BAEZ,

Petitioner,

v.

DENNIS BROWN, Warden,

Respondent.

:
:
:
:
:
:
:
:
:
:
:

CIVIL ACTION NO.
1:07-CV-2746-JOF

OPINION AND ORDER

This matter is before the court on Petitioner Roberto Baez’s Motion for Certificate of Appealability (“COA”) [15] and Motion to Appeal *in forma pauperis* [17].

In February 2007, Petitioner was convicted of armed robbery in Douglas County Superior Court, 06-CR-00635, and sentenced to life in prison. On October 31, 2007, Petitioner filed a writ of habeas corpus in the United States District Court for the Middle District of Georgia. Petitioner complained that the court reporter at his February 2007 trial had not yet prepared his transcript. He argued that without this transcript he could not proceed with efforts to exhaust his state remedies. He requested that he be allowed to bring his concerns to federal court because the state corrective process was ineffective to protect his rights. This court issued an order on June 10, 2008, finding that Petitioner had received

his transcript; there was nothing to prevent him from seeking relief in state court; and as such his request for federal relief was premature under 28 U.S.C. § 2254. This court denied Petitioner's Motion for Habeas Relief. The court also denied Petitioner's Motion for Recusal. Petitioner has appealed and argues that the undersigned's refusal to recuse is in violation of 28 U.S.C. § 144.¹ Petitioner alleges that the court is biased against him because Petitioner has filed mandamus actions against the undersigned arguing misconduct and because he has made comments about the undersigned's sexual orientation. Petitioner has filed more than twenty-five actions in this court. Petitioner has made numerous baseless allegations against the undersigned, and this court has denied numerous motions to recuse.

Petitioner requests a certificate of appealability from this court. In order to obtain a COA, a petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Barefoot v. Estelle*, 463 U.S. 880, 892 (1983). "In order to succeed

¹§ 144. Bias or prejudice of judge.

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term [session] at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

on his motion, Petitioner must demonstrate that the issues he desires to appeal ‘are debatable among jurists of reason, that a court could resolve the issues [in a different manner]; or that the questions are ‘adequate to deserve encouragement to proceed further.’” *Barefoot*, 463 U.S. at 893, n.4 (citations omitted). *See also Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). Petitioner has not asserted any arguments “adequate to deserve encouragement to proceed further.” Petitioner’s Motion for COA is DENIED [15]. Petitioner’s Motion to appeal *in forma pauperis* is DENIED as moot [17].

IT IS SO ORDERED this 9th day of September 2008.

s/ J. Owen Forrester
J. OWEN FORRESTER
SENIOR UNITED STATES DISTRICT JUDGE